IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1212 OF 2004

Dinesh Mahadev Bhondve)
Age: 24 years,)
Residing at Upper Indira)
Nagar, Pune.)..Appellant.
(Yerwada Central Prison))(Org.Accd.No.4)

V/s.

The State of Maharashtra,)
(At the instance of)
Wadgaon Maval Police Station,)
Dist.Pune.)..Respondent.

WITH

CRIMINAL APPEAL NO.1374 OF 2004

Vishal Parshuram Sunake)
Age 24 years, Occ: Business,)
Residing at Upper Indira Nagar,)
Pune.)
At present detained behind bar)
at Yerwada Central Prison)..Appellant.
at Pune.)(Org.Accd.No.3)

V/s.

State of Maharashtra, through)
The Police Inspector)
Lonawala Police Station,)..Respondent.
Lonawala.)(Org.Complainant.)

WITH

CRIMINAL APPEAL NO.24 OF 2005

Kisan Nathu Pardeshi,)
Age 37 years,Occupation-Business)
Residing at-Upper Indira)
Nagar, Pune.)
(At present detained in Yerwada)..Appellant.
Central Prison, Pune 411 006.))(Org.Accdd.No.1)

V/s.

The State of Maharashtra)
(through Officer-in-charge,)
Vadgaon, Maval Police Station,)..Respondent.
District-Pune))(Org.Complainant)

Mr.Deopam Kathrani i/b. Mr.Indrajeet Joshi for Appellant in Cri.Appeal No.1212/04

Mr.J.B.Kothecha for Appellant in Cri.Appeal No.24/05

Mr.Uday Warunjikar for Appellant in Cri.Appeal No.1374/04

Mr.K.V.Saste, APP for State.

CORAM : A.M.KHANWILKAR, J

RESERVED ON : DECEMBER 4, 2006.

PRONOUNCED ON: APRIL 9, 2007

ORAL JUDGMENT:

1. This common Judgment will dispose of all the three cognate appeals.

2. The foremost Appeal No.1212 of 2004 is filed by the accused no.4 (Dinesh Mahadeo Bondve). The following Appeal No.1374 of 2004 is filed by accused No.3(Vishal Parshuram Sunake) and the last Appeal No.24 of 2005 is filed by accused No.1(Kishan Nathu Pardeshi). The appellants along with other three accused were tried simplicitor for

offences punishable under sections 3 (1) (i), 3(1) (ii), 3 (2) and 3 (4) of the Maharashtra Control of Organised Crime Act,1999 (hereinafter referred to as MCOCA). The trial Court by the impugned Judgment and order in these appeals, dated 11th August, 2004, acquitted accused nos.2, 5 and 6 of all the charges. In so far as the appellants (accused nos.1,3 and 4) are concerned, they have been acquitted of offence punishable under section 3 (1) (i) and 3 (2) of the MCOCA. However, these appellants(accused Nos. 1,3 and 4) have been found guilty of offences punishable under section 3 (1) (ii) and 3 (4) of the MCOCA. For each of these offences, the appellants have been ordered to undergo sentence for 5 years and pay a fine of Rs.5,00,000/- each on each count, in default to further undergo rigorous imprisonment for 1 year on each count. The trial Court has however, directed the substantive sentences to run concurrently.

3. The prosecution case is that, a complaint of one Pujari of Kamshet was received in police station Vadgaon-Maval, which was registered as C.R.No.95 of 2001, for offences punishable under section 387 read with section 34 of the Indian

Penal Code. The said offence was registered against accused no.1 and others. In connection with the said offence, an inquiry was commenced. During such inquiry, it transpired that several criminal cases of serious offences were registered against the accused no.1 in the past. On inquiries with police station of Lonavla city, Lonavla Rural, Yerawada and also Vadgaon-Maval, it was revealed that there were as many as 23 offences registered against the accused no.1 and his henchmen. All these offences pertained to offences affecting human body or offences against property under Chapter XVI and XVII of the Indian Penal Code. It also transpired that the accused no.1 was the head of a gang which was indulging in such offences in the past. The accused no.1 himself and with the help of his associates, was indulging in those offences in the concerned areas for quite sometime. As it was revealed that more than one charge sheets have been filed before the competent local courts within the prescribed period of 10 years against the accused no.1 and his associates in relation to cognisable offences punishable with imprisonment of 3 years or more undertaken either singly or jointly as a member of an organised crime syndicate or on

behalf of such syndicate and the concerned Courts have had taken cognisance of such offences and more so that the said continuing unlawful activities were carried out by use of violence or threat of violence with the objective of gaining pecuniary benefits or gaining undue economic advantage for the accused no.1 himself as well as for his associates, the concerned Police Officer Vijay Kumar Bhoite (PW 1) prepared a report dated 30th October, 2001 addressed to the Special I.G. Kolhapur Range for seeking approval to register offence under the stated provisions of the MCOCA, as was required in terms of section 23 (1) (a) of that Act. The said report Exhibit 21 is quite exhaustive- as it refers to every singular criminal case against the respective accused. Most of the cases are covered by offences either under Chapter XVI or XVII of Indian Penal Code. Incidently, this report names 37 persons who were stated to be indulging in continuing unlawful activities as members of the organised crime syndicate or on behalf of such syndicate and committing organised crimes within the meaning of MCOCA.

4. The report Exh.21 evinces that the enquiry

revealed that there were 23 offences of serious nature already registered against the accused no.1, who has had held out himself to be the head of an organised crime syndicate/gang. Besides, it was noticed that several offences were pending against the named associates of the accused No.1. For, 9 criminal offences were reportedly pending against accused Raju Gaikwad(A5), 6 against Jalinder More(A6), 4 against Vishal Sunake(A3), 4 against Dinesh Bondve(A4), 3 against Sunil Pardeshi(A2). P.W.1 has meticulously referred to all the relevant aspects in his report Exhibit 21 about the fact that the appellants along with other associates were indulging in continuing unlawful activities as organised crime syndicate and committing organised crimes within the meaning of MCOCA. It is stated that the accused no.1 had formed this organised crime syndicate with his local contacts and also with others having criminal track record who had come in association with accused No.1 while he was in jail in connection with criminal cases against him. The accused no.1 is the fountain head of the gang who was indulging in such continuing unlawful activities and operating within the stated area. The report graphically reproduces the details of

several criminal cases in respect of which separate charge sheets have been filed against the concerned accused and concerned Courts having taken cognisance thereof. The offences referred to therein are cognisable offences punishable with imprisonment of 3 years or more in which accused were engaged singly or jointly, who are members of the syndicate. As the said offences were of serious nature, covered under chapter XVI and XVII of Indian Penal Code, committed by use of violence or threat of violence or coercion or other unlawful means with the objective of gaining pecuniary benefits or gaining undue economic advantage for accused or any other person; therefore, the PW 1 submitted the report to the competent authority for according approval for registration of FIR against the named persons for offences punishable under the provisions of the MCOCA.

5. The said report along with other relevant material was examined by the Special I.G.Kolhapur Range- Ramrao Bhausahab Pawar (PW 12), the appropriate authority. He however, accorded approval to register FIR for MCOCA offences only against six of the named persons. The approval

order so issued by PW 12 has been proved in evidence and marked Exhibit 22. Accordingly, as per the approval accorded for registration of the FIR, PW 1 proceeded to file FIR only against the six accused, on 12th December, 2001. The FIR is Exhibit-23. The FIR more or less replicates the relevant information given in the report of PW 1 Exhibit-21, as was submitted for approval to PW 12. The appellants before this Court have been named as accused nos. 4,3 and 1 respectively in the said FIR, which has been registered as C.R.No.54 of 2001 for offences under MCOCA.

6. As PW 1 became the complainant in the present offence, PW 12 issued instructions that the investigation of the case as registered, be taken over by ACP Narhari Maruti Athawale PW 11. Immediately on and from the next day after registration of offence i.e. 13.12.2001 and receipt of instructions, PW 11 took over the investigation of this case. He commenced inquiry by first examining witness Balasaheb Walunj (P.W.9). He then examined other witnesses in due course. During this inquiry, he has not only examined private persons but also made inquiry with

the police officials of different police stations where offences against the accused were registered. He claims to have examined several witnesses and recorded their statements. He also claims to have collected copies of the FIR, charge sheet in relation to the stated offences against the accused from different police stations. He also claims to have collected copies of the judgments of the criminal cases against the accused from the respective Courts as also called upon the revenue officers to furnish information regarding the landed properties of the accused.

7. On the basis of the inquiry so made and the materials collected, PW 11 proceeded to submit report to Omprakash Bali PW 13, Director General of Police at the relevant time, for according sanction under section 23 (2) of the Act. PW 13 examined all the relevant investigation case papers and the report of the Investigating Officer PW 11. After carefully examining and being fully satisfied, accorded sanction to prosecute the six accused for offences punishable under MCOCA.

8. Significantly, the present prosecution is

simplicitor under the provisions of MCOCA and not associated with the offence reported by one Pujari of Kamshet, in respect of which PW 1 had undertaken inquiry which led him to believe that the named persons were required to be proceeded for offences under MCOCA.

9. Be that as it may, after PW 13 accorded sanction to prosecute the six accused, the Investigating Officer PW 11 proceeded to file charge sheet against the said persons for offences punishable simplicitor under provisions of MCOCA. The MCOCA Court then took cognizance of the case and proceeded with the trial. The accused denied the charges and claimed to be tried.

10. During the trial, the prosecution examined different categories of witnesses. The first amongst them were Police officials who had made inquiry which led to the institution of present prosecution under the provisions of MCOCA. The initial inquiry was made by PW 1. After following the necessary procedure, he registered formal FIR against the named six accused. Soon thereafter the investigation of the case was taken over by PW 11

as per the directions of his superior. These witnesses have spoken about the steps taken by them and the material collected for justifying filing of the charge sheet for offences punishable under MCOCA against the accused. The second set of witnesses are superior officials who were involved at the stage of granting approval for registering of FIR as required under section 23 (1) (a) of the MCOCA; and for according sanction to prosecute the accused as required by section 23 (2). PW 12 acted as authority to grant approval to register FIR, whereas PW 13 acted as sanctioning authority to accord sanction to prosecute accused under section 23 (2). The third set of witnesses are again police officials PW 2, PW 3 and PW 4. PW 2 was attached to Lonavala police station between 1999 to 2002 during which period he was required to register criminal cases relating to serious offences against accused nos.1, 3 and 4. Such as, offences punishable under sections 324, 504, 337 read with section 34 of IPC being C.R.No.3 of 2001; under sections 143, 147,148,307 of IPC being C.R.No.6 of 2001; and under section 3, 25 of the Arms Act being C.R.No.50 of 2001. He has spoken not only about the registration of the said cases

against the stated accused, but also having undertaken investigation of the said offences and of filing charge sheet in the respective case against them. PW 3 is another police official, Pratap Vithal Markand, who was attached to Kamshet outpost- which is under Vadgaon Maval police station- for the period between January, 2001 to June, 2003. During this period, he had occasion to register offence of robbery against appellants and their associates, punishable under section 392 read with section 34 IPC being C.R.No.58 of 2001; and another offence punishable under section 387 read with section 34 of IPC being C.R.No.95 of 2001. PW 4, Raju Anand Chavan, who was attached to police station Vadgaon-Maval for the period between June, 1997 to 31st December, 1998 and with police station Lonavla between April, 2000 to December, 2001, he has spoken about the registration of criminal cases and filing of charge sheet in relation to those cases after completion of investigation against the appellants. The first offence referred to by him is offence punishable under section 387, 365, 504 read with section 34 of IPC as also section 3, 25 of Arms Act. Second criminal case is again for offence punishable under section 387, 326, 506 read

with section 34 IPC being C.R.No.30 of 1998. Third case is in relation to similar offence which was then registered as C.R.No.31 of 1998 with Lonavala city police station. He has lastly referred to another criminal case punishable under sections 386, 365 read with section 34 IPC and under section 3 and 25 of the Arms Act registered as R.C.C.No.74 of 1998 against the appellant. These witnesses have asserted that accused persons had created a reign of terror in the locality of Vadgaon Maval and Lonavala for quite sometime. The reports submitted by PW 1 and PW 11 refer to the fact of continuing unlawful activities of the gang of which the accused no.1 held out himself to be the head and master mind. It is noted that even the special police force was required to be deployed. These witnesses, during evidence before the Court, have brought on record all the relevant materials collected by them during inquiry or investigation. They have spoken about having scrutinised the relevant FIRs, and charge sheets in all the above referred criminal cases against the accused. The last category of witnesses examined by the prosecution is PW 5 to PW 10. They have spoken about individual offences committed by the

appellants on account of which they have suffered at the hands of the appellants. Two of these witnesses PW 5 and PW 9 turned hostile. The trial court permitted the Public Prosecutor to cross-examine the said witnesses. All these witnesses were subjected to thorough cross examination.

11. On analysis of the entire evidence, both ocular and documentary, the trial court proceeded to record finding of guilt only against the appellants (accused nos.4,3 and 1 respectively), for offences punishable under section 3 (1) (ii) and 3 (4) of the Act only. The trial court first adverted to the admitted facts. It has noted the number of criminal cases as against each of the accused. It has also noted that, offences so registered against the accused, were cognisable offence punishable with imprisonment of 3 years or more. It has then noted that more than one charge sheets have been filed against each of the accused. It has also noted that in so far as appellants are concerned, more than one charge sheet have been filed against them for having committed cognisable offence punishable with imprisonment of 3 years or

more undertaken either singly or jointly as member of the gang headed by the accused no.1 in respect of which the court has taken cognisance thereof. It has also found that, the fact that the accused were convicted or acquitted in those criminal cases, was of no consequence. It has noted that there can be no direct evidence of forming an organised crime syndicate. But, that has to be and can be inferred on the basis of material collected by the investigating agency. From the materials, it was seen that the appellant-accused no.1 and his associates indulged in offences of organised crimes. The trial Court has also adverted to the argument of the accused that the offence committed prior to 7th November, 1998 cannot be taken into account for proceeding against the accused for offences under special enactment i.e. MCOCA. It then proceeded to examine the evidence of each of the prosecution witnesses. On analysing that evidence, it has noted that the named accused operated singly or jointly as member of the gang headed by accused no.1 and created reign of terror in the locality. It has found that the accused no.1 was the master mind or kingpin of the gang, indulging in organised crime in the locality in

association with other accused who were members of that gang. It has also found that the evidence also evinces that the offences in which the accused had indulged were one of violence or threat of violence or intimidation or coercion and that arms and weapons were recovered from them. It has also found that the object of continuing unlawful activity was to gain pecuniary benefits or otherwise for the appellants themselves and members of their gang. The trial court then proceeded to hold that from the oral and documentary evidence on record, it was obvious that during last 10 years period, preceding the date of complaint, the accused no.1 indulged in as many as 21 offences which were punishable with imprisonment for 3 years or more and cognisance of those offences were taken by the competent court. The accused no.3 had indulged in as many as 4 offences successively during the year 2000-2001, alongwith accused no.2, by using violence. It is further found that in the year 2001, the accused no. 4 alongwith accused no.1 was involved in offences of same kind one after the other. The trial Court accordingly, proceeded to conclude that so far as accused nos. 1,3 and 4 were concerned (appellants before this

Court), they were working in association as organised crime syndicate and committing organised crime, of which accused no. 1 was the mastermind and head of the syndicate.

12. In so far as other accused namely accused nos. 2,5 and 6 are concerned, it is not necessary to dilate further except to observe that the trial court recorded finding of no guilt in their favour. For, one case was registered against of year 1988 and 1989, which was for the period earlier to 10 years preceding the date of complaint and could not be reckoned. The only other case against accused no.2 was C.R.No.6 of 2001 of individual offence and not as a member of the organised crime syndicate or for and on behalf of the Gang. Similar view is expressed in relation to accused nos. 5 and 6 that they were not involved in continuing unlawful activities as members of the organised crime syndicate or for and on behalf of the Gang. As the view in favour of accused Nos.2, 5 and 6 has not been challenged, the correctness thereof cannot be subject matter of these appeals.

13. Accordingly, it is the view taken by the

trial court against accused Nos.4,3 and 1 respectively made subject matter of the present appeals. They have been found guilty for offences under sections 3 (ii) and 3 (4) of the Act. The question is: whether the findings recorded by the trial court or for that matter the conclusions reached by it against the appellant(accused Nos. 4,3 and 1 respectively), can be said to be a possible view on the basis of the materials before it. In my opinion, the trial court has carefully analysed each relevant aspect of the matter to record findings of fact on the basis of which the ultimate conclusion has been reached. It is not a case of finding returned by the trial court being perverse or manifestly wrong.

14. Before we analyse the evidence on record, it will be apposite to first refer to the requirements of law, so as to constitute offence under section 3 (1) (ii) or 3 (4). Although, appellants were additionally charged for offence punishable under section 3 (1) (i) and 3 (2), however, I shall confine discussion only in relation to provisions of section 3 (1) (ii) and 3 (4) of the Act for which the appellants have been found guilty.

"Section 3 (1) (ii) and 3 (4) reads thus :

3. Punishment for organised crime :

(1) Whoever commits an offence of organised crime shall,....

(ii) in any other case, be punishable with imprisonment for a term which shall not be less than a five years but which may extend to imprisonment for life and shall also be liable to a fine subject to a minimum fine of rupees five lacs.

(4) Any person who is a member of an organised crime syndicate shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to a fine, subject to minimum fine of rupees five lacs."

15. The opening expression of section 3 (1) (ii) in any other case refers to cases other than offence resulting in death of any person. Indeed, the offence should necessarily be an organised crime. To understand the meaning of organised crime, though defined under section 2 (1) (e) of the Act, it will be necessary to also refer to sections 2 (1)(d) and 2 (1) (f) which defines the expression "continuing unlawful activity" and " organised crime syndicate". In fact, these definitions are so inextricably mixed that they

will have to be considered together.

16. For the sake of convenience, the meaning of the said terms provided in section 2 (1) (d) (e) and (f) are reproduced thus :

> "2(1) In this Act, unless the context otherwise requires-
>
> (d) "continuing unlawful activity" means an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three years or more, under taken either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheets have been filed before a competent court within the preceding period of ten years and that Court has taken cognizance of such offence ;
>
> (e) "organized crime" means any continuing unlawful activity by an individual,singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency ;
>
> (f) "organised crime syndicate" means a group of two or more persons who, acting either singly or collectively, as a syndicate or gang indulge in activities of organised crime ;"

17. The issue of sweep of these provisions is no more **res integra.** It will be useful to advert to the decision of our Court in the case of **Bharat Shantilal Shah vs.State of Maharashtra** reported in **2003 All M.R.(Cri) 1061**. In para-19 of this decision the Court observed thus:

> "Dealing with the next definition in section 2 (1) (d) of 'continuing unlawful activity it was submitted that it suffers from violation of article 14 as it treats unequals as equals. It makes an activity continuing unlawful activity if more than one charges of cognizable offence punishable with imprisonment of three years or more are filed in competent court. It does not touch an activity as continuing unlawful activity if undertaken by a person who is known to be a criminal but more than one charge sheets have not been filed against him. " A person charged ten times of an offence though acquitted on every occasion may yet be roped in as a person engaged in continuing unlawful activity. Whereas a person who is convicted for an offence for three years punishment cannot be touched by this definition if he is not charged with more than two of such offences. The definition therefore treats as equal persons who are hopelessly unequal that is to saya person who is a known criminal but charge sheeted and convicted not more than once and another who has been falsely charged with 10 fabricated charges and acquitted of all the 10 charges with a finding that the charges were fabricated yet merely because cognizance has been taken of that charge are treated as person engaged in continuous unlawful activity. The definition is therefore arbitrary and liable to be struck down as violative of article 14. The

> arguments appear to be attractive at the first blush, but deeper scrutiny reveals the hollowness of the argument. "

18. In para 20 of this decision, it is observed that while interpreting the meaning of the above provision, it must be remembered that this enactment of MCOCA is an enactment by State Legislature for the purpose of making special provisions for prevention and control of criminal activity by a person or a gang and for matters connected therewith or incidental thereto, meaning thereby connected and incidental to organised crime and organised crime syndicate. In para 25, the court went on to observe as follows :

> " .....If we read the definition **again,** what has been defined as continuing unlawful activity is a member of organized crime syndicate in respect of which any activity prohibited by law and done repeatedly i.e. more that once for which charge sheet has been filed in the court of competent jurisdiction in the past ten years. The purpose of definition is to define what continuing unlawful activity is and it is for the purposes of defining what is continued unlawful activity that those charges are to be taken into consideration. Mere taking into consideration of such charges cannot result in discrimination of the kind alleged by Shri Manohar. The activity must be continuing unlawful activity and to define it with clarity it is provided that any person who in the past was charge sheeted for more than one charge of such activity or crime the cognizance of

> which has been taken and imprisonment for which is more than three years should be taken into account. The fact of the person having been charge sheeted in such cognizable offences in the past makes the unlawful activity, continuing unlawful activity. This section only defines what the activity is. It does not itself provide for any punishment for that activity..... "

In para 27, the Court observed thus :

> "We also do not find substance in the challenge that the equality clause in the Constitution is violated because the definition ropes in anyone charged more than once, irrespective of whether the charge resulted in an acquittal or conviction. The circumstances that followed the charge are not material. The provision only defines what is **continued** unlawful activities and refers to whether a person has been charged over a period of ten years for the purpose of seeing whether the person is charged for the first time or has been charged often. The circumstance of conviction or acquittal that followed the charge are not material. The limited purpose is to see antecedents of the person. Not to convict."

In para 28, the Court observed thus :

> "Section 2 (1) (d) defines what the **continuing** unlawful activity is and the enactment is intended to prevent and control organized crime. Organized crime is something which is continued unlawful activity and that continued unlawful activity is repeatedly indulging or facing charge of indulgence in crimes punishable with three years or more. The definition therefore thus defines with clarity what is meant by continuing unlawful activity for the purpose of achieving the object of the Act."

19. The **sine qua non** for institution of offence punishable under the present Act i.e. MCOCA, is concerned, is essentially in relation to an offence of organised crime. If organised crime committed has resulted in death of any person, that is punishable in terms of section 3 (1) (i). In all other cases, it is punishable under section 3 (1) (ii). The organised crime as perceived by this Act is of continuing unlawful activities as contained in section 2 (1) (d), which in turn provides that the activity is prohibited by law for the time being in force which is a cognisable offence punishable with imprisonment of 3 years or more, undertaken singly or jointly as member of the organised crime syndicate or on behalf of such syndicate. If however, the activity prohibited by law, though qualifies the abovesaid requirement of clause (d), is committed, but, if it is first of its kind, that will not become continuing unlawful activity. For that, repetition of such activity within the stipulated period would attract clause (d), as it postulates that, for such activity more than one charge sheet have been filed before a competent court within the preceding period of 10

years. Besides filing of more than one charge sheet in respect of the alleged activity prohibited by law, the court must have taken cognisance of such offences. In other words, mere filing of more than one charge sheet is not enough. In addition, such continuing unlawful activity has been committed by individual singly or jointly as a member of organised crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion or other unlawful means with the objective of gaining pecuniary benefits or gaining undue economic or other advantage for himself or any other person or promoting insurgency. The question is: whether all these requirements are attracted in the present case or whether there is evidence to substantiate each of this aspect.

20. I have no hesitation in upholding the view taken by the trial Court that on analysing the evidence in particular of PW 1 and PW 11 to be read with the evidence of PW 2, 3 and 4 who are also police officials who were associated with the registration of offences in relation to the unlawful activities committed by the accused as

also with investigation and filing of charge sheet of such cases and of the private witnesses P.W.5 to 10, the appellants are guilty of offence under sections 3(1)(ii) and 3(4) of the Act. For, these prosecution witnesses have spoken about such unlawful activities committed by the respective appellants within the specified period and more than one charge-sheets having been filed against them for offences punishable with more than 3 years of imprisonment and also of the fact that the competent court had taken cognisance of the respective offences.

21. The ocular as well as documentary evidence on record supports the prosecution case that stated criminal activities were committed during the relevant period in succession in the locality by the appellants and their henchmen or associates. There is evidence that the accused no.1 was the mastermind and kingpin of the gang of which others including accused Nos. 3 and 4(appellants herein) were members. The said persons were operating in the locality for quite some time and had created reign of terror in the area. The accused were indulging in such crimes singly or jointly as

member of the gang led by accused No.1 or on behalf of that gang. Further, most of the offences indulged by them were covered within the offences under Chapter XVI and XVII of I.P.Code(of offences affecting the human body and of offence against property) with objective of gaining pecuniary benefits or gaining undue economic or other advantage for themselves and to reign supremacy or terror in the area. The fact that the reported offences committed by the appellants and other members of the gang were ascribable to offences under Chapter XVI and XVII of I.P.Code presupposes that the unlawful activity indulged in was by use of violence or threat of violence or intimidation or coercion or other unlawful means. Each of the appellants have indulged in an offence of organised crime and were members of the organised crime syndicate or gang headed by accused no.1. A priori, the conclusion recorded by the trial Court holding appellants guilty of the offence punishable under section 3(1)(ii) as well as section 3(4) of the Act is inevitable.

22. The evidence on record indicates the complicity of the accused in continuing or

successive specified type of unlawful activities preceding the complaint of one Pujari of Kamshet, alleging offence of extortion-under section 387 read with section 34 IPC, by accused no.1 and his associates. The unlawful activity complained by said Pujari is stated to have been committed by accused no.1 himself and his two other associates-Sou.Sharadevi Kishan Pardeshi (his wife) Karim Chotu Miya Shaikh (his brother-in law). Indeed, the local police could have initiated action to register offence under MCOCA only against the accused named in the said criminal case registered as C.R.No.95 of 2001 at Vadgaon Maval. Obviously, the local police thought it appropriate to take a comprehensive view of the prevailing condition against all the members of the gang which was headed by accused no.1. For that reason, PW 1 submitted an exhaustive report Exh.21, referring to the relevant details in respect of series of criminal cases against each member of the gang spread over for about ten years preceding the complaint of said Pujari muchless registration of FIR in respect of the present offence under MCOCA. The superior authority however, advisedly decided to proceed only against six persons out of 37

suggested by PW 1. After grant of approval to register FIR, PW 1 registered the present FIR against the named six accused. In such a situation, it was not necessary for the prosecution to produce evidence to establish that, in fact, the accused had indulged in commission of the respective unlawful activities indicated against his name. However, all that the prosecution is expected to establish is that, more than one charge sheet have been filed before the competent court against that accused within the preceding period of 10 years for invoking MCOCA provisions qua him; and that the courts have taken cognisance of such unlawful activities which are punishable with imprisonment of 3 years or more, undertaken either singly or jointly by the accused as member of the organised crime syndicate or on behalf of such syndicate by use of violence or threat of violence or coercion or any other unlawful means with the objective of gaining pecuniary benefits or gaining undue economic or other advantage for himself or any other person or promoting insurgency.

23. In this case, as mentioned earlier, the evidence of PW 1 and PW 11 read with evidence of

other police witnesses PW 2,3 and 4 makes it amply clear that each of these aspects have been brought on record. Besides, the ocular evidence is corroborated by the documentary evidence such as FIRs and charge sheets in relation to criminal cases against the concerned accused. In addition to this evidence, the prosecution has also relied on the evidence of private witnesses PW 5 to 10 who have spoken about having suffered at the hands of the concerned accused-appellants for the stated unlawful activities. The cases referred to by the prosecution witnesses are indisputably cognisable offences punishable with imprisonment of 3 years or more. They are mostly covered by offences under chapters XVI and XVII of Indian Penal Code. Their evidence also indicates that in most of the cases the accused no.1 is common. The unlawful activities has been committed by accused no.1 along with different sets of associates involved in separate cases. The witnesses have also spoken of the fact that accused no.1 was head of the gang which was engaged in commission of such continuing unlawful activities by use of violence or threat of violence or intimidation or coercion or other unlawful means. That the accused had created a

reign of terror in the locality. There are offences not only covered under chapter XVI of IPC but also under chapter XVII of IPC. The cases of robbery and extortion, amongst others, have been registered and proceeded against the named accused, which necessarily means that the objective of such unlawful activities was of gaining pecuniary benefits or gaining undue economic advantage for accused no.1 for himself or for his associates who were working as a gang of which accused no. 1 was the kingpin. With such kind of overwhelming evidence on record, there is hardly any room to overturn the well-reasoned and well-considered judgment of the trial court. Even if there is some error here or there, that cannot be the basis to overturn the conclusions reached by the trial court which can be upheld on the basis of the reasons hitherto mentioned.

24. Counsel for the appellants would however, contend that it was necessary for the prosecution to prove that each of the accused in fact indulged in commission of an organised crime. The argument clearly overlooks the overwhelming evidence on record which strings together all the necessary

details about the number of unlawful activities reported during the relevant period and proceeded against each of the appellants. The accused no.1 was found to have indulged in 23 offences, whereas accused no.3 in four offences, accused no.4 in four offences, during the relevant period. The trial court has rightly noted that accused no.3 alongwith accused no.1 had indulged in four different offences of specified kind during the relevant period i.e. between 2000 to 2001, which attracted the requirements of sections 2(1)(e) r/w 2(1)(d). Whereas, Accused no. 4 was found to be involved in similar offences in 2001 along with accused no.1. In addition, the concerned accused had indulged in independent offences during the relevant period singly or jointly with other henchmen of accused No.1 as members of the gang. The evidence thus establishes that the accused no.1 was the kingpin of the gang and he himself alongwith his associates or henchmen including accused nos. 3 and 4; all of them were indulging in commission of such crime as member of the gang. These cases by itself were sufficient to proceed against the appellants(accused Nos. 1, 3 and 4) under this Act. It was not at all necessary for the

prosecution to prove the complicity of accused-appellants in those cases in any manner, muchless beyond reasonable doubt. All that was required to be shown is that, more than one charge sheet has been filed in respect of specified offences before a competent court within the preceding period of 10 years against accused in relation to cognisable offences punishable with imprisonment of 3 years or more and that the court has taken cognisance of such offence. This position has been established by the prosecution in terms of the oral evidence of PW 1 and PW 11 as well as PW 2 to 4 and also by producing FIR and charge sheet in relation to relevant cases against the appellant. Indeed, the prosecution has also produced material regarding the involvement of appellants in specified offences during the period preceding 10 years from the date of filing of the present complaint. The witnesses have also spoken about the concerned courts having taken cognisance of those cases, which evidence has remained unshaken. In fact, there is no cross examination at all by the accused on relevant matters. The cross examination is merely to persuade or force the witnesses to accept that the appellants have

been acquitted in those cases. As has been observed in the decision of our Court in **Shah's case (supra),** the fact of acquittal or discharge from the case is of no consequence. Accordingly, there is no substance in the argument canvassed on behalf of the appellants.

25. It was vehemently argued on behalf of the appellants that there is no legal evidence that cognizance of criminal cases in which charge sheet have been filed against the accused, was taken by concerned court of competent jurisdiction. In earlier part of this judgment, I have already adverted to this aspect. PW 1 in the initial report submitted to PW 12, for grant of approval to register FIR against the accused for offences under the present Act, had disclosed the details of the cases pending against each of the accused and the fact that concerned courts have taken cognisance. This position is reiterated in the FIR filed by PW 1. PW 1 in his evidence has also asserted in that behalf in para-1 of his examination-in-chief in the following terms:

> " It was also revealed that cognizance of **all** the offences was taken by concerned courts."

There is absolutely no cross-examination on this aspect. In fact, the trial court while mentioning the undisputed facts has noted that the courts concerned have taken cognisance "has not been disputed". In view of this finding of the trial Court, it is not open to the appellants to contend to the contrary. Obviously, such finding has been recorded by the trial Court on the basis of the case made out before it by the respective parties at the hearing or trial. That should be given finality. [see **State of Maharashtra Vs. R.S. Nayak reported in (1982(2) SCC 463).** Besides, this position is established from the fact deposed to by the witnesses that charge sheets have been filed and that their evidence was also recorded before the court. The question of recording of evidence of the witnesses would naturally arise only after the court has taken cognisance. This fact stated by these witnesses has not been challenged at all. Besides, the evidence of PW 4 was sufficient to corroborate the version of PW 1. It is stated therein that the concerned courts have taken cognisance of the concerned cases. Thus, understood the argument of the appellants that the prosecution has merely produced copies of the FIR

and charge sheets and there is no legal evidence regarding the factum of concerned court having taken cognisance, deserves to be rejected.

26. The next argument on behalf of the appellants is that, **mens rea** is an integral part of the offence under the provisions of MCOCA, which aspect has been overlooked by the trial Court. Reliance is placed on decision of the division bench of this Court in **Bharat Shah's case (supra)**. In para 66, which are conclusions recorded, it is observed that the provisions of sections 3 and 4 contemplate the existence of **mens rea** inherently and shall always be read therein as a necessary ingredient of the offences. Reliance is also placed on the decision of the apex court in the case of **Ranjit Singh Brahmajit Singh Sharma vs State of Maharashtra reported in 2005 (2) Crimes 168.** In para 31 of this decision, the apex court has observed that **mens rea** is a necessary ingredient for commission of a crime under MCOCA. It was argued that this exposition of law is not restricted to the offence under section 3 (2) of the Act, but would apply also to other offences under that Act such as section 3 (1) (ii) and 3 (4)

with which we are concerned in the present case. The appellants may be justified to the extent that the trial court has not specifically referred to the requirement of this ingredient while recording its final conclusion. However, on reading the judgment of the trial court as a whole, it is obvious that the trial court has recorded the finding of guilt against the appellants on the fulcrum of involvement of appellants in continuing unlawful activities singly or jointly as a member of organised crime syndicate or on behalf of such syndicate by use of violence or threat of violence or intimidation or coercion with the objective of gaining pecuniary benefits or gaining economic advantage for themselves or any other associate. For the nature of offences committed by the appellants and being involved in continuing unlawful activities either singly or jointly in succession and in different combinations as members of organised crime syndicate or on behalf of such syndicate, the existence of **mens rea** is inherent. There is intrinsic evidence against the appellants of **mens rea** from the established facts. For, there can be no direct evidence of intention to commit the offence. In any case, the prosecution

witnesses have deposed that the accused no.1 was the kingpin of the syndicate. There is not only oral evidence to support this position but that inference can be drawn also on the basis of other material which has come on record. The accused no.1 was found to be involved in about 23 cases of unlawful activities, each of them was a cognisable offence punishable with imprisonment for 3 years or more. Accused no. 1 committed those offences taking assistance of his associates from the locality. Acquaintance with some of the associates was developed by accused no. 1 while in jail. The accused nos. 3 and 4 were also involved along with accused no.1 in different cases, as rightly found by the trial court. The trial Court on the basis of the evidence on record has proceeded to hold that the appellants were members of organised crime syndicate which was headed by the accused no.1 and this syndicate was operating in the stated areas where it had created reign of terror. The offences amongst others, not only covered under Chapter XVI of IPC affecting human body but, also offences under Chapter XVII of I.P.Code of property, extortion and of robbery. Thus, understood, there is no substance in the argument of the appellants

that the ingredient of **mens rea** to attract the offence of MCOCA has not been established by the prosecution.

28. It was next contended that the material collected by the P.W.1 before registration of FIR for MCOCA offence, the same has been used by the Investigating Officer(P.W.11). There is no evidence to disclose the source from where the said material was collected. This is a serious irregularity in the investigation. Specific reference is made to Exhibits 27, 37, 38 and 41, which are on record. It was argued that the said material cannot be looked into, as it is inadmissible. According to the appellants, the material so collected by P.W.1 was not collected during the investigation of the offence as such. The investigation of offence could commence only after registration of FIR. After registration of FIR, immediately investigation was taken over by P.W.11. Besides, it is contended that collection of the stated material by P.W.1 was not consistent with section 23(1)(b) of the MCOCA, which mandates that no investigation of an offence under the provisions of this Act shall be carried out by a

police officer below the rank of the Deputy Superintendent of Police. Reliance was also placed on section 2(h) of the Code of Criminal Procedure, which defines the expression "investigation". The appellants had relied on decision of the Apex Court in the case of **H.N.Rishbud V/s. State at Delhi** reported in **AIR 1955 SC 196** and another decision in the case of **State of M.P. V/s. Mubarak Ali** reported in **AIR 1959 SC 707**, to buttress the argument that it was necessary for the Investigating Officer to collect those documents from the proper source during the course of investigation.

29. Indeed, it is not the case of P.W.11 that he himself collected the documents Exhibits 27,37,38 and 41. However, from the evidence of P.W.1 and P.W.11 juxtaposed with the contemporaneous record, it is obvious that the said documents Exhibits 27, 37, 38 and 41 were collected by P.W.1 during the enquiry preceding registration of FIR for offence punishable under the MCOCA. It is also seen that as soon as FIR was registered by P.W.1, the investigation was taken over by P.W.11. Thus understood, Investigating Officer in this case was

not P.W.1 but P.W.11. In so far as the entrustment of the investigation of this case to P.W.11 is concerned, that is not challenged at all. There can be no doubt about the well established position that, in law, investigation of the offence commences only after registration of FIR. Even so, the question is, whether it is possible to discard the documents which have been proved and Exhibited as Exhibit Nos. 27, 37, 38 and 41 respectively, which are brought on record by the prosecution. I have no hesitation in rejecting the argument of the accused that the said documents cannot be looked into. This is so because, the documents were available in the police record when the investigation was taken over by P.W.11 after registration of the FIR. The said documents already formed part of the approval granted by the competent authority for registration of the FIR. It will have to be remembered that the case on hand pertains to special enactment which provides for certain formalities to be complied with before registration of first information report for offence under this Act. No doubt, the P.W.11 himself has not collected the stated documents from the concerned sources, but as the documents were

already part of record when the P.W.11 took over investigation, nothing prevented the Investigating Officer to refer to the same for the purpose of investigation. Significantly, P.W.11 has not rested the allegations against the appellants only on the basis of those documents. However, he personally investigated the whole matter including by examining the concerned witnesses and collecting further materials. It is after collecting all the evidence to indicate complicity of the accused, P.W.11 proceeded to file charge sheet against them in Court after taking prior sanction of the competent Authority. Moreover, the prosecution witnesses have deposed about the involvement of the accused persons in the commission of the crime. The documents would only corroborate their version. The fact that those offences were registered is not in dispute. The documents referred to pertain to such criminal cases. Thus understood, it is not possible to discard the said documents.

30. Assuming that these documents were not to be looked into, there was other material on record, which has been duly proved by the prosecution witnesses, which indicates that more than one

criminal case have been registered against the appellants herein during the relevant period, relating to cognizable offence punishable with imprisonment of 3 years or more and that cognizance of such case has been taken by the concerned Court. Even for this reason, argument of the appellants that there is irregularity in the investigation or for that matter admissibility of Exhibits 27, 37, 38 and 41 are concerned, does not take the matter any further.

31. It was argued that there was no charge nor proof that the objective of the appellants was to indulge in continuing unlawful activities for gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency. On this premiss, it is contended that the appellants ought to succeed in these appeals. To consider this submission, let us straightaway advert to the charges framed against six accused persons. The same reads thus:

> 1. That you accused Nos. 1 to 6, during the period in between 7.11.1988 to 11.8.2001 at pune city Vadgaon-Maval, Lonawala, Malawali and Mawal Tahsil, District Pune and Karjat, District Raigad,

being the member of organised crime syndicate acted singly or jointly either as a member of organised crime syndicate or on behalf of such syndicate with use of violence intimidation or other unlawful means, committed such bodily or property offences, thereby resulting in the death of Musafa Shaikh and Abbu Badshaha Shaikh, with a deadly weapons and thereby committed an offence punishable under Section 3(1)(i) of the Maharashtra Control of Organised Crimes Act, and within my cognizance.

2. That you accused No.1 to 6 during the aforesaid period and places and during the course of the same transaction and in pursuance of the aforesaid criminal conspiracy, you being the member of organised crime syndicate acted singly or jointly either as a member of organised crime syndicate or on behalf of such syndicate with use of violence intimidation or other unlawful means, committed such bodily or property offences, i.e. attempting to commit murder and cause bodily injuries to witness i.e. causing grievous hurt to 1) Manohar Baban Ingulkar, 2)Amit Prakash Gawali and his brother, 3) Vaibhav Laxman Gawali, 4) Sunil Amrita Kudle, 5) Baban Bhagu Galande and Maqbool Ahmed Shaikh, etc. and thereby committed an offence punishable under section 3(1)(ii) of the Maharashtra Control of Organised Crimes Act, and within my cognizance.

A N D

3) That you accused No.1 to 6, during the aforesaid period and at the places stated above and during the course of same transaction and in pursuance of the aforesaid conspiracy with intent to commit unlawful activities which are prohibited by law and which are also cognizable offence to wit attempt to commit murder and causing injury to aforesaid witnesses, committing robbery, kidnapping, extortion, theft, etc. which are registered against you accused during the period of 10 years to the date of taking cognizance of the present crime by

the Hon'ble Special, which are continuance illegal activities to commit organized crime and thereby committed an offence punishable under section 3(2) of the Maharahstra Control of Organised Crime Act, 1999 and within my cognizance,

A N D

4) That you accused Nos. 1 to 6, during the aforesaid period and at the aforesaid place, during the course of the same transaction and in pursuance of the aforesaid criminal conspiracy, were a member of an organised crime syndicate, and thereby committed an offence punishable under section 3(4) of the Maharashtra Control of Organised Crimes Act, 1999 and within my cognizance."

Having regard to the nature of charges framed by the trial Court, there is no force in the submission of the appellants. Inasmuch as, on the basis of the abovesaid charges, trial proceeded and evidence came to be produced. It is well established position that even if charge were to be a defective one, Court has ample power to alter the charges. For, the mandate of section 464 of the Criminal Procedure Code provides that-no finding, sentence or order of a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including misjoinder of charges, unless, in

the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby. There is nothing on record to indicate that on account of the charge as framed by the trial Court, any failure of justice has in fact been occasioned to the appellants. On the other hand, from the tenor of cross examination, it is more than clear that the appellants were fully aware of the charge and in particular the offence, for which they were being tried and thus proceeded with the trial without any demur. In any case, in my opinion, the charges against the appellants, for which they have been eventually convicted under section 3(1)(ii) and section 3(4) of the Act are complete and proper. The argument of the appellants, if accepted would mean that the trial Court was required to reproduce the language of the relevant section in the charge. It is not a case, as if there is no evidence at all regarding the factum of continuing unlawful activities; as also about the intention behind such activities being of extortion, robbery and the like, covered by Chapter XVI and XVII of the I.P.Code. There can be no direct evidence of intention or objective. That has to be inferred from the established

circumstances. That evidence is present in this case to which reference has been made in the earlier part of this Judgment.

30. That takes me to the next argument of the appellants. According to the appellants, at best the criminal offences registered against them after 24th February, 1999 can be taken into account. For, on that day the MCOCA came into force. It was contended that if the appellants are right in this regard then the offences only at Sr.6,7, 14, 15 and 16 would fall in that category. It was then argued that cases at Sr.No.6 and 7 are concerned, no charge sheet was filed as the same were pending investigation. Naturally, there was no occasion for the competent Court to take cognizance of those cases. Those cases will have to be excluded from the consideration. It was then contended that in so far as offences at Sr.No.15,16 were concerned, the same were on account of personal enmity and had no connection with the Organised Crime Syndicate. On this basis, it was argued that the only offence that remains for consideration and could be taken into account was at Sr.No.14 pertaining to offence of kidnapping in relation to which charge-sheet was

also filed and cognizance was also taken by the competent Court. On the above basis, twofold arguments have been advanced. In the first place, it is argued that as the offences registered prior to 24th February, 1999 cannot be reckoned; and amongst the other offences, only one offence can be said to be of the kind ascribable to the provisions of MCOCA, that by itself cannot be the basis to proceed on the allegation of continuing unlawful activities within the meaning of MCOCA. It was also contended that the appropriate authority before grant of approval to register FIR as well as at the subsequent stage granting sanction to prosecute the accused on the basis of which charge-sheet came to be filed, both these authorities have obviously overlooked this crucial aspect. In other words, there was no legal material before the sanctioning authority that the accused could be prosecuted for offence under MCOCA. For that reason approval as well as sanction accorded were vitiated.

31. To buttress the above arguments that only offence registered after 24th February, 1999 can be reckoned, reliance was placed on the decision of

the Division Bench of Our High Court in the case of **Altaf Ismail Sheikh & Ors. V.s State of Maharashtra & Ors. reported in 2005(1) Bom. C.R.(Cri) 833.** I shall straightaway refer to this aspect of the matter. I have no hesitation in taking the view that the argument of the appellants is both ill-advised and inconsistent with the statutory provisions, as well as founded on misreading of the decision of our High Court. In so far as statutory provision is concerned, the definition of "continuing unlawful activities" presupposes that the offences registered against the accused in relation to the activities prohibited by law, which is a cognizable offence punishable with imprisonment of 3 years or more in respect of which more than one charge-sheet have been filed before the competent Court within "preceding period of 10 years" and the Court has taken cognizance of such offences. In other words, to constitute continuing unlawful activities, amongst others, it must be alleged that the accused was involved in more than one specified cognizable offences in the preceding period of 10 years. The natural meaning of the expression "preceding period of 10 years" would mean that preceding period of 10

years to be reckoned from the date on which the FIR has been registered against the said person for offence punishable under MCOCA and not limited to any offence registered only after 24th February, 1999, as is contended. In my view, taking any other view of the matter would be rewriting the provision which will be against the legislative intent or rendering the provision Otiose or redundant. Coming to the decision of the Division Bench of our High Court in the case of **Altaf Ismail Sheikh (Supra),** the exposition therein is obviously on the basis of fact situation of that case. In that case, the Court has found as of fact that the writ petitioner was assigned the job of data entry during the period 1995 to 1998 and not thereafter. The involvement of accused also refers to examination of the year 1998. There was no material that after 24th February, 1999 the writ petitioner continued to engage himself in any unlawful activity. On this finding, the Court proceeded to hold that as no other offence has been registered against the writ petitioner allegedly committed after 24th February, 1999, the question of proceeding against writ petitioner for offence by applying MCOCA provisions did not arise. In

other words, in that case if the prosecution had succeeded in bringing on record that similar unlawful activity was committed or repeated even after 24th February, 1999, the said accused could have been proceeded against with the stringent provisions of MCOCA. In the present case, the prosecution is not invoking provisions of MCOCA on the basis of unlawful activities committed by the appellants prior to February 24, 1999, but on the basis of unlawful activities of the same type committed after 24th February, 1999. The cases filed within preceding period of 10 years before the date of registration of the FIR are reckoned only for the purpose of spelling out that, the specified offence committed after coming into force of MCOCA, by legal fiction, assumes the colour of continuing unlawful activity. There is marked difference between the two situations.

32. In so far as the argument of the appellants that the concerned authorities overlooked crucial aspect that cognizance was not taken by the competent courts before granting approval to register FIR or to issue sanction for prosecution, and for which reason the approval or sanction was

vitiated, I have already referred to the evidence on record which clearly establishes that P.W.1 in his report submitted to P.W.12 for approval to register FIR has unambiguously mentioned that the concerned Courts have taken cognizance of the offence referred to in the report against the concerned accused. He has deposed about the same before the Court. Even FIR unambiguously records that the concerned Courts have taken cognizance of offence against the respective accused. Even P.W.11 Investigating Officer has deposed about the fact of cognizance taken by the concerned Courts. In his report submitted to P.W.13 for according sanction to prosecute the accused clearly refers to this fact. Both the competent authorities- who granted approval for registration of FIR and also one who granted sanction for prosecuting the accused have been examined as P.W.12 and P.W.13. Both these witnesses have stated that they considered all aspects of the matter after scrutiny of the material placed before them. That assertion has remained unshaken. In fact, there is no cross or even suggestion put to these witnesses that when they examined papers, the fact that the concerned Courts have taken cognizance was not before them

and they proceeded to issue orders only on the basis of FIR placed before them. Accordingly, it is not possible to accede to the argument of the appellants.

33. Counsel for the appellants had also argued that there was no evidence that accused No.1 was present when the offence was committed by accused No.3 or accused No.4. This submission was made in the context of the offence referred to at Sr.No.15. That is an argument on merits of the complicity of the accused No.1 in the concerned crime. That argument is not relevant for the purpose of defending the prosecution relating to offence punishable under MCOCA. For attracting provisions of MCOCA parameters are entirely different. All that the prosecution is obliged to establish is that cognizable offence has been registered against the accused which is punishable with sentence of 3 years or more and that the concerned Court has taken cognizance thereof. Once this position is established, the fact that the accused was not in fact involved in that offence or was likely to be acquitted or has in fact been acquitted will make no difference.

34. The argument of the appellant that, as the P.W.1, who registered the subject FIR was not associated with registration of the FIR or investigation of criminal cases against the accused No.1; nor the P.W.11 who acted as the investigating officer in the case on hand was concerned with the relevant cognizable offences registered against the accused, preceding registration of FIR in the present case; In such a case these officers were obliged to produce cognizance order in respect each such criminal case in the present proceeding. I have already dealt with this argument regarding factum of taking of cognizance by the concerned Courts, in the earlier part of this Judgment. In fact, the trial Court has recorded the concession of the appellants on this aspect. It has recorded that concerned Courts have taken cognizance is undisputed fact. Besides, the evidences of the prosecution witnesses on this aspect have remained unshaken. The fact that prosecution witnesses have deposed about the filing of charge-sheet and also of recording of evidence clearly supports the prosecution case that cognizance was taken by the concerned courts. As

those cases were more than one in number and also covered by the definition of "continuing unlawful activities" indulged by the appellants as organised crime syndicate, there is no deficiency in the prosecution case that too of the kind which would be fatal.

35. It was also contended on behalf of the appellants that the prosecution has merely produced FIR Exh.24 to 41. No charge-sheet has been produced. Once again this argument does not take the matter any further, having regard to the overwhelming evidence on record already adverted to in the preceding paragraphs.

36. It was then argued that offence at Sr.15 and 16 were registered on the same day against the accused No.3. The accused No.3 has been falsely implicated in those cases. It is not possible to countenance this submission. Mere fact that two offences which qualify the definition of "unlawful activity" specified under the MCOCA have been committed on the same date, that does not mean that the same cannot be taken into account. It is not possible to assume in the present proceeding that

the concerned appellant was falsely implicated in those cases.

37. It was then contended that the offences at Sr.Nos. 15 and 16 by no standards can be said to be one committed for taking pecuniary advantage. The amount referred to therein is so negligible that no one would commit offence for such a paltry amount. Although this argument is attractive, is of no avail. As is mentioned earlier, in the present proceeding, all that the Court has to examine is whether the case of commission of Organised Crime is made out against the accused. The argument is a subtle attempt to drive the Court into the issue of merits of the criminal cases, which is only made the foundation to attract the offence under MCOCA. Besides, the fact that the stakes for committing such crime was far too less cannot be an argument to absolve the accused. In other words, the pecuniary benefit was very small or large cannot be the test to hold that the offence under MCOCA is made out or not.

39. It is lastly argued on behalf of the appellants that the appellants have already

undergone substantial part of punishment. The appellants are not financially well off. Besides, the appellants were of tender age at the relevant time. It is argued that even if this Court were to confirm the finding of guilt and order of conviction, the Court may take a lenient view by reducing the sentence already undergone and in any case, reduce the default period of one year of rigorous imprisonment. This argument will have to be only stated to be rejected. The offence for which the appellants have been tried and have been found guilty is one of indulging in continuing unlawful activities and of organised crime and being member of organised crime syndicate. For such offences, the sentence cannot be lenient one that too, on the consideration put forth by the appellants that they are not financially well off and will not be able to pay fine amount or that they were of tender age at the relevant time. The punishment awarded by the trial Court is the minimum punishment, that could be given for such offence. In terms of sections 3(1)(ii) or section 3(4) as the case may be, punishment provided under the said provision is not less than five years but may extend to imprisonment for life and shall also

be liable to pay fine subject to minimum fine of Rs.5 Lakhs. This Court therefore can neither reduce the substantive sentence to one already undergone nor can consider of reducing the fine amount ordered to be paid by the appellants. The question is, whether the default period deserves to be reduced. In the fact situation of the present case, I find no reason to take a different view than the one taken by the trial Court in this behalf. The default period, in my opinion, is commensurate with the requirement to pay fine amount of Rs.5 Lakhs each on each count. Accordingly, no interference is warranted even in that regard.

40. Hence, these appeals should fail. The same are dismissed.

(A.M.KHANWILKAR,J)